STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,481,) 12,482,

Appeal of) 12,486,) & 12,774

INTRODUCTION

The petitioners appeal the decision by the Department of Social Welfare in each of their cases withholding a portion of their retroactive SSI benefits as reimbursement for general assistance (GA) paid to each of the petitioners during the pendency of their respective SSI applications. The issue is whether such withholding and recovery is consistent with the pertinent regulations and with the terms of the "Recovery of Assistance (RA) Agreement" signed by each of the petitioners.

FINDINGS OF FACT

In lieu of an oral hearing the parties have submitted written stipulations of fact and legal argument. Copies of the stipulations are attached to this Order.(1) The facts and legal arguments are summarized in the "discussion" below.

ORDER

The Department's decisions is affirmed.

DISCUSSION

The Department's authority to withhold from a GA recipient's initial SSI check the amount of GA that has been paid by the Department to that recipient during the pendency of that recipient's application for SSI is set forth in W.A.M. § 2600(D) as follows:

The GA applicant or member of the GA household who is also an SSI applicant must sign a Recovery of General Assistance Agreement (DSW-230B) which authorizes SSA to send the initial check to this department so that the amount of General Assistance received can be deducted. The deduction will be made regardless of the amount of the initial SSI check. Any remainder due the SSI recipient shall be forwarded to him or her within 10 days. The deduction shall be made for General Assistance issued during the period from the first day of eligibility for SSI to the date the initial SSI check is received by the department.

The petitioners in these cases all applied for SSI within one year of signing their initial RA Agreements for GA. In each case, however, the petitioners were not found eligible (by the Social Security Administration) for SSI payments, including retroactive benefits, until at least one year after they had

signed the Agreements. When the petitioners' initial SSI payments were sent to the Department by the Social Security Administration the Department deducted as reimbursement an amount equal to all the GA benefits it had paid to the petitioners as of the dates the petitioners were found to be retroactively eligible for SSI.

Neither the state regulation, supra, nor the federal SSI regulations (20 C.F.R. §§ 416, Subpart S), upon which the above state regulation is based, place any specific time limitations on the effectiveness of Recovery of Assistance Agreements. The only reference to a time limitation is in the language of the form RA Agreements themselves that are used by the Department.(2) The portion of those Agreements that is in dispute in these matters is the following paragraph:

I further understand that this authorization is effective for one (1) year from the date I sign it and that it will cease to have effect at the end of one (1) year from the date I sign it, unless I file for SSI within that time or one of the following events occurs earlier, in which case the authorization will cease to have effect as of the date of such an event:

- The Secretary of the U.S. DHHS makes an initial payment on my claim;

- The Secretary of the U.S. DHHS makes a final determination on my claim;

- The State and I agree to terminate the authorization.

Although the Department has not explained why it includes any provisions regarding a time limitation in its form RA Agreements when it is not required by federal regulation to do so, and although the language in question in the Agreements is less than succinct, the hearing officer disagrees with the petitioners that the Agreements are "ambiguous" on this point. The Agreements state that they shall expire after one year "unless" (inter alia) the recipient "file(s) for SSI within that time"--something all the petitioners in these cases did. The petitioners' argument that this provision can reasonably be read as terminating the Agreements in less than a year as soon as

the recipient applies for SSI, rather than extending the Agreements beyond one year if the recipient within that year applies for SSI, is untenable.

The whole point of the Recovery of Assistance Agreement is to have the recipient apply for SSI benefits to be used in lieu of GA (see W.A.M. §§ 2600[B] and [C][3]), and to reimburse the Department if that application is successful (see W.A.M. § 2600[D], supra). This is made clear to recipients in the following paragraph in the Agreement, which directly follows the one in question:

I further understand that signing this authorization form means I want to file for SSI benefits. I also understand that I must file an SSI application with the social security office for the Social Security Administration to decide if I am eligible for SSI benefits. I understand that if I am found eligible for SSI benefits my eligibility for SSI can begin as early as the date I sign this authorization only if I file the SSI application within 60 days from the date I sign this authorization.

The petitioners' interpretation of the paragraph in question renders the Agreements virtually meaningless and monetarily worthless to the Department. Why would the Department bother to have a GA recipient sign an agreement to apply for SSI and to reimburse the Department from his initial SSI payment if the

agreement is voided as soon as the recipient applies for SSI? In view of such a plainly irrational result it cannot be concluded that the petitioners' interpretation of the paragraph in question is reasonable.

Notwithstanding the above analysis, the hearing officer was initially puzzled as to why in two of the cases, Nos. 12,482 and 12,486, the Department had the petitioners sign a second (identical) RA Agreement more than one year after the first ones, but while their SSI applications (which had been filed within a year after the signing of their first Agreements) were still pending. While the Department's proffered explanation for this "practice" was not compelling (see Department's Supplemental Memorandum, pp. 3-4), it must be concluded that it is reasonable, if not prudent, for the Department to require GA recipients to sign Agreements on at least an annual basis in case a recipient, unbeknownst to the Department, after receiving an unfavorable decision on an application for SSI (which, under the regulations and the terms of the Agreement itself, terminates the last RA Agreement), files a subsequent--and successful--application for SSI. It cannot, therefore, be concluded that the Department's "practice" (which appears not to be consistently and diligently applied) of having GA recipients sign "updated" RA Agreements in and of itself evinces any indication that the Department itself considers any Agreements previously-signed by those recipients to have "expired".

As a last resort, the two petitioners who signed subsequent RA Agreements argue that under the common law of "merger" their second Agreements should be held to "supersede" their first ones. As both parties agree, however, the doctrine of merger of contract only applies to "successive agreements that cover the same subject matter and contain inconsistent terms". See Dartmouth Savings Bank v. F.O.S. Associates, 145 Vt. 62 (1984). In the instant cases the successive agreements were identical to the previous ones. Thus, it cannot be concluded that the signing of a subsequent RA Agreement, in and of itself, terminates an otherwise-still-valid preexisting Agreement. As noted above, the Department has a legitimate, if not compelling, reason to regularly "update" the RA Agreements of GA recipients. It cannot be held that each time it does so it terminates or invalidates any prior Agreements that those recipients may have entered into.

For all the above reasons the Department's decisions in these matters is affirmed.

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1. The parties orally agreed that paragraph 6 of the Stipulation in Fair Hearing No. 12,486 should be amended to include the fact that the petitioner in that case signed a second Recovery of Assistance Agreement with the Department on August 10, 1993. (A copy of this Agreement was included in the attachments to the parties' Stipulation.)

2. The federal regulations do provide, however, that the express terms of the written agreements used by state agencies are binding as to any limitations that are contained in the agreements themselves. Id. § 416.1906.